

Appl. No. 10/763,989  
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### REMARKS

In the above reference office actions, the claims were rejected under 35 USC 112, second paragraph. Applicant respectfully asserts that above amendments have obviated the rejections.

The claims were also rejected under 35 USC 102(e) or alternatively under 35 USC 103(a) as being unpatentable over Sholder et al. ("Sholder"). Applicant respectfully traverses these rejections.

The amended claims clearly indicates that the first signal is meant to capture cardiac tissue (e.g., a pacing pulse) whereas the second signal is sub-threshold; thus, unable to capture tissue. Each pulse may be above or below the capture threshold based upon multiple factors, including duration (e.g., pulse width) and/or strength (e.g., amplitude). Furthermore, this distinction applies regardless of when the pulse is delivered. That is, an above threshold pulse will not capture during a refractory period (though the level delivered is sufficient to do so) and a below threshold pulse will not capture even if, e.g., cardiac cells are polarized.

Sholder requires that all of the generated signals, whether for therapy or for data are above threshold. See Col. 12, lines 25-35. Thus, Sholder is limited to "transmitting data" during refractory periods due to the fact that the "data signals" must be sufficiently strong to be received on a surface EKG and then transmitted telephonically.

As the present claims require that the second signal (e.g., the data signals) are subthreshold, the claims are not anticipated by the reference. Furthermore, since the reference requires large signals detectable from a surface EKG performed by a patient and transferred telephonically, the claims are not obvious in view of the reference.


As the present claims are in condition for allowance, notice of the same is respectfully requested. Applicant will provide an appropriate terminal disclaimer upon notice of allowable subject matter to address the double patenting rejection.

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Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned attorney to attend to these matters.

Respectfully submitted,

Date: 10/12/05

  
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